UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States Department of Housing and Urban Development, on behalf of Earsell Collier, Jr., Charging Party, and Earsell Collier, Jr., Intervenor, v. Joe Ellis Joseph, Dell Woods, and Tommy Woods, Respondents.	HUDALJ 04-93-0306-1 Dated: June 2, 1994

Theresa L. Kitay, Esq.
For the Charging Party

Robert McDuff, Esq.
For the Intervenor

Davey L. Tucker, Esq.
For the Respondent

Before: SAMUEL A. CHAITOVITZ
Administrative Law Judge

INITIAL DECISION

Statement of the Case

On February 1, 1993, Earsell Collier, Jr. ("Complainant") filed a complaint with the United States Department of Housing and Urban Development ("HUD" or the "Charging Party"). This

complaint alleges that Respondents Joe Ellis Joseph, Dell Wood,[1] the Fair Housing Act, as amended, 42 U.S.C. §§ 3601, *et seq.* ("the Act").

After an investigation, HUD issued a Determination of Reasonable Cause and Charge of Discrimination on October 26, 1993. The Charge alleged that Respondents violated §§ 3604(a), (b), and (c) of the Act. On November 24, 1993, Mr. Collier filed a request to intervene in this proceeding, and on December 20, 1993, I granted that request.

A hearing in this matter was held in Jackson, Mississippi on January 11 and 12, 1994. At the close of the hearing the parties were instructed to file post-hearing briefs by March 11, 1994. Respondents filed a Motion for Extension which I granted. Respondents later filed a motion to submit rebuttal briefs which I also granted. All parties filed their final briefs on April 12, 1994, and the record closed.

Based upon this record, including my observation of the witnesses and their demeanor, and my evaluation of the evidence, I make the following findings.

Findings of Fact

A. The Veranda Apartments

1. Respondent Dell Wood, a white woman, is employed by Joe Ellis Joseph Properties ("JEJ Properties") as the manager of The Veranda Apartments ("Veranda"), a twenty-four unit complex in the Belhaven neighborhood of Jackson, Mississippi. Transcript page ("Tr.") 36, 45, 78, 322.

2. Respondent Joe Ellis Joseph, a white man, owned the Veranda at the relevant time for this matter. Tr. 321. Following a bankruptcy, he continues to own the Veranda and two other apartment complexes. Tr. 322.

3. Ms. Wood has worked for JEJ Properties for five and a half years, and has been in property management for approximately 14 years. Tr. 36, 45, 78. Previously she has managed three other JEJ Properties: Chalet Arms, Harding Place, and Riverbluff. Tr. 81-82.

4. Prior to the 1990s, the Veranda's Belhaven neighborhood was an all-white, segregated community. Tr. 81. There have been no black tenants at the Veranda.

Tr. 344. Chalet Arms, Harding Place, and Riverbluff are in more racially integrated neighborhoods. Tr. 82.

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[1]The Complaint was amended on September 27, 1993, to add Ms. Wood as a respondent.

In their post-hearing briefs, the Charging Party and the Intervenor argued that Tommy Wood was liable only under §3604(c).

5. Ms. Wood's responsibilities include showing apartments to potential renters, taking applications for the apartments, and leasing the apartments. She checks the information on the applications, and has the authority to decide whether to rent to an applicant or not. Tr. 37-38, 57.

6. Since 1993, Ms. Wood and Mr. Joseph developed "guidelines" for tenant selection at the Veranda. In part, the guidelines require that a tenant have a "good job history" (*i.e.*, they must be at the same job for six months or, if transferring to Jackson, must have a reference from a previous employer). The guidelines also contain the provision that on a credit report, "anything over an R5 must be explained, if three or more R5's [*sic*] applicant will not be considered." Tr. 39-40, 44; Government's Exhibit ("G-Ex.") 4.

7. Prior to 1993, credit checks were not done on all applicants. Tr. 44. An applicant referred by someone who knew either Ms. Wood or Mr. Joseph would not be checked. Applicants who worked for someone Mr. Joseph knew would usually not be checked. Additionally, applicants referred by a long term resident of the Veranda usually were not checked. Tr. 44-45, 86, 352-353. The grantor of the referral would guarantee the rent of the applicant, but Ms. Wood has never attempted to collect delinquent rent from such a guarantor. Tr. 86-87, 94-95. Several applicants avoided credit checks through these methods. Tr. 45.

8. Most of the applicants applying to the Veranda in the year preceding Mr. Collier's application placed a deposit on an apartment prior to their acceptance as a tenant in the Veranda. Tr. 64-65, 76-78. Some of these applicants' applications were not filled out completely. Tr. 65; G-Ex. 6-12.

9. Deposits are returned to applicants who have not been approved for tenancy. Rejected applicants receive their deposits by picking them up from the Veranda, usually within a day of the denial. Tr. 93.

10. The Veranda is a member of the Greater Jackson Apartment Association, a local professional association. It conducts seminars and meetings involving the apartment industry. Tr. 273-74, 277; Respondent's Exhibit ("R-Ex.") 12. Ms. Wood attended a fair housing seminar in the summer of 1993, and Respondent Tommy Wood has attended some meetings. Tr. 278.

Mr. Joseph testified that the guidelines were less stringent at his properties in more integrated neighborhoods because the properties are older than the Veranda. Tr. 327.

An "R5" is a credit report designation referring to a revolving or open account that "Pays (or paid) in more than 120 days from payment due date or more than four payments past due." Government's Exhibit 13, unnumbered page 2.

It is unclear on what occasions Ms. Wood did not take deposits before approval, or the circumstances surrounding her not taking a deposit. The record does not establish on how many occasions a deposit was not taken before approval, nor was there any evidence as to specific instances.

Mr. Joseph has attended dinner meetings of the Association. Business was discussed at these meetings, but there is no evidence that fair housing matters were discussed. Tr. 283.

B. Earsell Collier, Jr. and Kevin Damon McDaniel

1. Complainant Earsell Collier, Jr., a black man, is a territory sales manager for Kraft Food Services in Jackson, Mississippi. He has been working for Kraft since December 7, 1992. Tr. 179-80, 184. At the time of the hearing, he was 30 years old.
Tr. 180.

2. During college, Mr. Collier joined the Reserve Officer Training Corps. After he was graduated, Mr. Collier went on full time active duty where he rose to the rank of Second Lieutenant and served in the Desert Storm Operation. Tr. 181-82. Currently he is a Captain in the Army Reserve. Tr. 183.

3. In early December 1992, Mr. Collier applied to the Advantage apartments in Jackson, was accepted, but chose not to move there. Tr. 208-09, 249.

4. Mr. Collier also applied at the Countryside Apartments in Jackson during the same period. He was rejected for bad credit. Tr. 207, 211, 295.

5. On December 31, 1992, Mr. Collier went to the Veranda seeking an apartment. He met Ms. Wood, they looked at an apartment, and he filled out an application. Tr. 46-47, 185. He also explained that his credit was not perfect, but that he had rental references, one of which he put on the application. Tr. 186-87. Ms. Wood requested a credit check for Mr. Collier on January 4, 1993, and noted the results on the application. Tr. 47-48; G-Ex. 4, 13. She did not take a deposit from him. Tr. 77.

6. Mr. Collier's credit report showed three R9s.

Ms. Wood claims that she did not take the deposit from Mr. Collier because he applied after she was off-duty and she did not have the security deposit form in her briefcase. Tr. 87-88. Because I find
Ms. Wood not be credible on factual matters (*see* n.12, 13), I do not accept her explanation for her departure from the Veranda's normal procedure.

An "R9" is a credit report designation referring to a revolving or open account that is a "Bad debt; placed for collection." Government's Exhibit G-13, unnumbered page 2.

7. Mr. Collier was the first black applicant to the Veranda. Since his rejection, there have been two or three other black applicants. No black applicant has been accepted for tenancy. Tr. 46, 66, 83, 346.

8. Kevin McDaniel, a white man, has been friends with Mr. Collier for over five years. Tr. 124.

9. In early January 1993, Mr. McDaniel was interested in transferring to a job in Jackson, Mississippi from St. Joseph, Louisiana. Tr. 125, 148. Mr. Collier recommended the Veranda to Mr. McDaniel. He said that although he had been turned down there, he thought Mr. McDaniel might like the Veranda. Tr. 126, 146-47, 188.

10. Mr. McDaniel made an appointment with Ms. Wood to see the Veranda. She told him that either she or her husband would show him an apartment. Mr. Wood, a white man, was at the Veranda when Mr. McDaniel arrived. Tr. 127, 304.

11. Mr. Wood's primary responsibility is as a maintenance man. Tr. 306, 308, 334. He occasionally opens an apartment to potential tenants. Tr. 127, 334.

12. Mr. Wood showed Mr. McDaniel the apartment, and said that Mr. McDaniel would like living there because the apartment was nice, and in a nice neighborhood.
Tr. 128.

13. Additionally, during this discussion of the living environment at the Veranda, Mr. Wood told Mr. McDaniel that, as another benefit, there were no blacks. Specifically, he said, "The good thing about it, it's all white and you don't have to put up with that kind of people." Tr. 128, 311-12, 314-15. Mr. McDaniel asked if he meant no black people, and Mr. Wood confirmed that he meant no black people. Tr. 128.

14. Mr. McDaniel was "shocked" by the statement. Tr. 130. Later that afternoon, he telephoned Mr. Collier to tell him about his visit. Mr. McDaniel told
Mr. Collier that he would not be renting at the Veranda. Tr. 131. When Mr. Collier pressed Mr. McDaniel for the reason, Mr. McDaniel repeated Mr. Wood's statement about having no black

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Mr. McDaniel credibly testified that he and Mr. Wood were not discussing the physical appearance of the apartment at the time. Tr. 129. Mr. Wood testified that he was referring to the color of the paint and wallpaper in the apartments, and people painting the apartments themselves, and not to the race of the residents. Mr. Joseph also testified that the interiors of the Veranda are white or off-white. Tr. 306-08, 314-16, 336-38. I find that this explanation strains credulity. Mr. Wood and Mr. Joseph are Respondents in this matter and Mr. McDaniel is not a party and has no financial interest in the outcome of this proceeding. Additionally, Mr. Wood testified that the wallpaper in the Veranda had color in its pattern. Tr. 313. Furthermore, the racial composition of the Veranda, and the subsequent preferential treatment of a white woman with poor credit (*see* Findings of Fact concerning Kim Cassidy, below), all lead me to find that
Mr. Wood's testimony is invented.

people at the Veranda. Tr. 132, 150, 189.

15. Mr. Collier was upset and hung up on Mr. McDaniel. That evening he visited Mr. Collier to discuss the visit again. Tr. 132, 150. Mr. McDaniel observed that after hearing the story again, Mr. Collier was hurt and upset. Tr. 133.

16. Mr. Collier found news of the statement "somewhat disappointing." Tr. 189. He began to wonder if he had had good credit, whether the Veranda still would have rejected him. As a result he felt frustrated, distrustful, and unsure of what to do in the face of racially biased statements. Tr. 190-94, 235.

17. Mr. Collier expressed his resentment to Mr. McDaniel by stating that while he could serve his country in Saudi Arabia for the Desert Storm operation, he could not rent an apartment in Jackson, Mississippi. Tr. 134, 195, 198. Since the incident,
Mr. McDaniel has noticed that Mr. Collier has been more guarded about possible instances of discrimination. Tr. 135, 199.

18. Mr. Collier has not sought any professional treatment following the incident. Tr. 196, 236.

19. In January 1993, Mr. McDaniel co-signed a lease with Mr. Collier at the Lakeshore Landing apartments ("Lakeshore") in Jackson. Tr. 138; R-Ex. 7. Mr. Collier told Mr. McDaniel that he "needed [his] white face" to rent the apartment. Tr. 142, 172, 210, 212. Mr. Collier had never previously made such a request. Tr. 172, 191, 247.

20. In August 1993, Mr. McDaniel co-signed a lease with Mr. Collier at the Drexel House apartments ("Drexel") in Metairie, Louisiana. Tr. 156-57; R-Ex. 9.
Mr. Collier again told Mr. McDaniel he "needed [his] face." Tr. 157, 173, 217.
Mr. Collier had been told that the area the apartment was in was "mostly white."
Tr. 214. He felt some apprehension about applying for an apartment in such a neighborhood. Tr. 248.

C. Kim Cassidy

1. On February 23, 1993, Kim Cassidy, a white woman, applied to a duplex that was part of the Veranda, and gave Ms. Wood a deposit. Tr. 66-67, 89, 99-100, 109-110; G-Ex. 2.

Mr. Joseph testified that Mr. Collier called him to complain about Mr. Wood's statement. Mr. Joseph conducted an in-house investigation, and concluded that no discrimination had occurred. Tr. 333.

Respondent argues that the duplex and the Veranda are separate entities, therefore rendering
Ms. Cassidy's encounter irrelevant. Tr. 121, 339. I disagree. The duplex was next door to the Veranda, was owned by JEJ Properties, and was managed by Ms. Wood. Mr. Joseph testified that it was managed in conjunction with the Veranda. Tr. 339, 351-52. During the investigation of this matter, Mr. Joseph gave HUD's investigator Kim Cassidy's application as part of the group of applications for the Veranda. Tr. 358. Furthermore, Ms. Wood told Ms. Cassidy that she could park in the Veranda's lot. Tr. 110. I find that for purposes of this case, the duplex is effectively part of the

2. Ms. Cassidy told Ms. Wood that her credit was not good. Tr. 101. On February 25, 1993, Ms. Wood requested a credit check for Ms. Cassidy. Tr. 70, G-Ex. 14. Her credit "was at least as bad" as Mr. Collier's credit. Tr. 76, 99.

3. Within a few days, Ms. Wood offered Ms. Cassidy an apartment. She told Ms. Cassidy that she could move in to the apartment if she paid first and last month's rent in addition to the deposit. Because they had arranged for Ms. Cassidy to have the apartment's carpet cleaned, Ms. Wood said she could move in immediately. Tr. 102.

4. Ms. Wood told Ms. Cassidy that if Ms. Cassidy was going to be late with her rent, to let Ms. Wood know in advance so she could "help [Ms. Cassidy] out . . . work with [her] a little bit." Tr. 103.

5. Ms. Cassidy did not move into the Veranda because she could not afford to pay the first and last month's rent. Additionally, she found a roommate. Tr. 103, 112-114.

6. When Ms. Cassidy retrieved her security deposit, Ms. Wood had her sign the deposit receipt underneath the statement, "Application not approved, security deposit refunded 3/2/93." Tr. 104. Ms. Wood explained to Ms. Cassidy that signing the statement was a formality necessary for Ms. Cassidy to get back her deposit. Tr. 105. Ms. Cassidy's deposit was returned on March 2, 1993. Tr. 93, 117.

Discussion and Conclusions of Law

The Fair Housing Act prohibits, in part, the refusal to rent a dwelling to any person because of their race. 42 U.S.C. § 3604(a). In the House Report accompanying the Fair Housing Amendments Act, Congress recognized that "[t]wenty years after the passage of the Fair Housing Act, discrimination and segregation in housing continues to be pervasive." H.R. Rep. No. 711,

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Veranda.

Ms. Cassidy's application was dated February 23, 1993, by Ms. Wood. Tr. 69, 90. Ms. Wood claims to have unintentionally backdated the application to two days prior to the credit check. Tr. 71. However, a security deposit agreement for Ms. Cassidy, signed by Ms. Wood, is also dated February 23, 1993. Respondent's Exhibit 13. Having heard no evidence explaining why the application would have been backdated under any circumstances, and having the security agreement dated the same day as the application, I find that the credit check was performed two days after Ms. Cassidy's application. Additionally, I note that this discrepancy damages Ms. Wood's credibility on factual matters.

Ms. Wood denied that the apartment was offered to Ms. Cassidy. Tr. 72. I find Ms. Cassidy to be a more credible witness. I so conclude because Ms. Cassidy is not a party and has no stake in the outcome of this matter. Ms. Cassidy does not know Mr. Collier, or any Respondent, other than having met Ms. Wood. Tr. 106. Additionally, although she was interviewed by a HUD investigator for this matter, she was unaware that the case involved the Fair Housing Act. Tr. 107. Therefore, I credit Ms. Cassidy's version of her attempted rental at the Veranda.

100th Cong., 2d Sess. 15, *reprinted in* 1988 U.S.C.C.A.N. 2173, 2176.

The Charging Party alleges that Respondents Joe Ellis Joseph and Dell Wood violated 42 U.S.C. §§ 3604(a), (b), and (c), and Tommy Wood violated 42 U.S.C. § 3604(c) as they relate to race. HUD must prove these charges by a preponderance of the evidence. *HUD v. Leiner*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,021 (HUDALJ Jan. 3, 1992).

The record contains direct evidence of violations of the Act. Mr. Wood made the unlawful statement to Mr. McDaniel that black people were unwelcome in the all-white Veranda. That sentiment taints all other actions by Respondents. Despite Respondents' contention that good credit is the prime criterion for tenant selection, the evidence compels me to conclude that race is the selective factor in this case.
Ms. Wood's offer of an apartment to Kim Cassidy, a white woman with poor credit similar to Mr. Collier's, demonstrates that racial concerns take precedence over financial ones. Admission to the Veranda is based on an arbitrary system of references and race controlled by Mr. Joseph and Ms. Wood. Applicants with references from people in the Veranda or from people who know Respondents generally avoid credit checks. Given that the Veranda is an all-white complex in an until-recently segregated Mississippi neighborhood, this referral system operates in a manner that perpetuates segregation in the Veranda.

The referral system may, at first glance, seem neutral. No limits are placed on the race of applicant a resident, or Mr. Joseph or Ms. Wood, may refer. But this system operates subtly. If Respondents had made admission to the Veranda based solely on references from white people, they would clearly violate the Act. Here, the system of referrals that Respondents often use is not facially based on race, but residence. However, in the context of the Veranda's and Belhaven's racial composition, the referral system automatically raises the suspicion of violative operation. Furthermore,
Mr. Collier was never informed of the referral system, was never asked if he knew any residents of the Veranda, and was never asked to place a deposit on an apartment at the Veranda, as are most applicants.

Section 3604(b) prohibits discrimination "in the terms, conditions, or privileges of . . . rental of a dwelling . . . because of race [or] color." Section 3604(c) makes it unlawful to make any statement "with respect to the . . . rental of a dwelling that indicates any preference, limitation, or discrimination based on race [or] color."

Respondents argue that Mr. Wood is only a maintenance person at the Veranda and not connected in any way to rental decisions there. However, I find that he is an agent of Mr. Joseph's because he is his employee and on occasion is directed to show apartments to potential tenants. Moreover, because he made the statement while showing the apartment to Mr. McDaniel, it was not unreasonable for Mr. McDaniel to conclude that Mr. Wood spoke for the Veranda's management.

Moreover, no evidence was introduced showing the denial of a white person based on poor credit.

I also note that the record does not establish that Ms. Cassidy knew anyone living at the Veranda, or was referred by anyone living at the Veranda.

In light of the foregoing, I conclude that Respondents denied Mr. Collier housing at the Veranda because of his race after imposing different standards for acceptance to the Veranda based on his race.

My conclusion would be identical if this case were decided under the well-settled *McDonnell-Douglas* framework. *See McDonnell-Douglas v. Green*, 411 U.S. 792 (1973). The test was explained in *Pollitt v. Bramel*, 669 F. Supp. 172, 175 (S.D. Ohio 1987) as follows:

> First, the plaintiff has the burden of proving a prima facie case of discrimination by a preponderance of the evidence . . . . Second, if the plaintiff sufficiently establishes a prima facie case, the burden shifts to the defendant to "articulate some legitimate, undiscriminatory reason" for its action . . . . Third, if the defendant satisfies this burden, the plaintiff has the opportunity to prove by a preponderance that the legitimate reasons asserted by the defendant are in fact mere pretext. . . .

Pollitt at 175, *citing McDonnell Douglas*.

To establish a prima facie case in this matter, the Charging Party must prove that: (1) Complainant is a member of a protected class; (2) he applied for and was qualified to rent the apartment; (3) he was rejected by Respondents; and (4) after the rejection, the apartment remained available. See, *e.g.*, *Phillips v. Hunter Trails Community Ass'n*, 685 F.2d 184, 190 (7th Cir. 1982); *Robinson v. 12 Lofts Realty, Inc.*, 610 F.2d 1032, 1038 (2d Cir. 1979); and *Williams v. Matthews Co.*, 499 F.2d 819, 826 (8th Cir.), *cert. denied*, 419 U.S. 1021, 1027 (1974).

The charging party successfully established a *prima facie* case of discrimination. Mr. Collier is a member of a protected class, he attempted to rent at the Veranda, he was rejected, and the apartment remained available. Respondents vigorously deny that a *prima facie* case was shown because, they assert, Mr. Collier was unqualified to rent based on his poor credit. However, this argument is more clearly addressed as Respondents' articulation of a legitimate, non-discriminatory reason for their denial. Rejection of a potential tenant based on his or her poor credit is perfectly appropriate under the Act. The inquiry, however, does not stop at that articulation. The Charging Party has shown this reason to be pretextual. As discussed above, the different treatment of Mr. Collier and Ms. Cassidy, despite the similarity in their credit histories, establishes that race, not credit, was the deciding factor in not renting to Mr. Collier. Additionally, Mr. Collier was not asked for a deposit on the apartment while others were asked. Having found that Respondents' reason for denying Mr. Collier was pretextual, I now must decide whether the record as a whole shows there was discriminatory intent. *See St. Mary's Honor Center v. Hicks*, 113 S. Ct. 2742 (1993). Mr. Wood's statement to Mr. McDaniel concerning the racial makeup of the Veranda, the racially tilted reference policy, and the disparately applied credit check policy evidence intent to discriminate. Further, I conclude that Respondents' raising the pretextual justification for denying
Mr. Collier the apartment is itself evidence of discriminatory intent.

Accordingly, I find that Respondent Dell Wood violated 42 U.S.C. §§ 3604(a) and (b). She refused to rent to Mr. Collier because of his race and she required a credit record not required of white applicants. However, she made no discriminatory statements violative of 42 U.S.C. § 3604(c). I also find that Respondent Tommy Wood violated 42 U.S.C. § 3604(c) for the statement he made to Kevin McDaniel. Finally, I find that Respondent Joe Ellis Joseph violated 42 U.S.C. §§ 3604(a), (b) and (c). He is the owner of the Veranda, and thus responsible for the actions of his agents. *Hamilton v. Svatik*, 779 F.2d 383, 388 (7th Cir. 1985). Furthermore, the record does not establish that Mr. and Ms. Wood had, by their conduct and actions, disobeyed orders or instructions from Mr. Joseph.

Remedies

Having found that Respondents engaged in discriminatory housing practices, Complainants are entitled to appropriate relief. This relief may include actual damages and injunctive or other equitable relief. Respondents may also be assessed a civil penalty "to vindicate the public interest." 42 U.S.C. § 3612(g)(3). The Charging Party seeks $25,000.00 in intangible damages, a total of $22,000.00 in civil penalties, and certain injunctive relief.

Intangible Damages

There is wide discretion to set emotional distress damages, limited by two critical factors: the egregiousness of Respondents' behavior and the effect of that behavior on the Complainants. As the court stated in *Morgan v. Secretary of Housing and Urban Development*, 985 F.2d 1451, 1459 (10th Cir. 1993), "more than mere assertions of emotional distress" are required to support an award for that type of intangible damage. Rather, the record as a whole must demonstrate the need for the amount awarded.

Respondents engaged in racial discrimination and subterfuge. While the record reflects that Mr. Collier was treated courteously enough to recommend the Veranda to a friend despite his own rejection, Respondents' scheme was unraveled by Mr. Wood's statement. Upon discovering this misdirection, Mr. Collier was "somewhat disappointed" to learn his denial was based on race. Soon after, he became guarded and distrustful of people's motives, wondering if they were racially based. Mr. Collier's dismay was heightened by his feeling that even though he served his country in the military, he could still be discriminated against at home. After his rejection at the Veranda, Mr. Collier felt he needed "a white face" to apply to the Lakeshore apartments, and, nine months later, the Drexel apartments. This change in outlook is the core compensable damage.

The evidence of this damage as presented at hearing was sketchy. There was no showing, anecdotal or otherwise, of the impact on his day-to-day living. He did not have to endure a face-to-face encounter with Respondents' discrimination; rather, he felt the discrimination by way of an uncovered ruse. His work has not been affected and neither has his health. However, Respondents acted in an egregious manner, continuing a tradition of racial division that the Act

was designed to combat. They lied to
Mr. Collier, and designed racially based barriers to his tenancy at the Veranda. Though he continues working at Kraft and participating in the Army Reserves, Mr. Collier's approach to his relations with others has been changed, perhaps permanently. Considering the evidence presented of the severity of Respondents' acts and the reaction of Complainant, I award Mr. Collier $7,500.00 for emotional distress.

Civil Penalties

The Charging Party seeks a civil penalty of $10,000.00 from Joe Ellis Joseph and Dell Wood, and $2,000.00 from Tommy Wood. Under the Act, an administrative law judge may assess a maximum civil penalty of $10,000.00 against each respondent, where, as here, there has been a finding of liability, but no history of any prior discriminatory acts. 42 U.S.C. § 3612(g)(3)-(A).

Assessment of a civil penalty is not automatic. *See* H.Rep. No. 711, 100th Cong., 2d Sess. at 37, *reprinted in* 1988 U.S.C.C.A.N. 2173 at 2198. In determining the amount of a penalty, an administrative law judge must consider the nature and circumstances of the violation, the degree of culpability, the financial circumstances of the respondent, the goal of deterrence, and other matters as justice may require. *Id*.

As the owner of a number of rental properties, Joe Ellis Joseph is bound to know and adhere to the Fair Housing Act. Mr. Joseph has presided over the preservation of the Veranda as an all-white building. As the Veranda's manager, Dell Wood contributed to this perpetuation. They intentionally discriminated on the basis of race, and are in the position to continue such discrimination. Only significant civil penalties will deter Respondents' from continuing to violate the Act. Neither Mr. Joseph nor Ms. Wood presented evidence to show that their financial condition would preclude them from paying a civil penalty. Upon consideration of the relevant factors, I conclude that Joe Ellis Joseph and Dell Wood should each be assessed a civil penalty of $10,000.00.

Tommy Wood is also bound by the Act. Though he did not make the discriminatory statement directly to Complainant, he still indicated a preference for excluding members of a protected class. While he does not have any authority to rent apartments, he does occasionally show them to prospective tenants, and must be deterred from making preferential statements in the future. Therefore, I conclude that a civil penalty of $1,000.00 is appropriately assessed against Mr. Wood. He also presented no financial evidence to show he could not pay a civil penalty.

Injunctive Relief

Once a determination of discrimination has been made, injunctive relief may be ordered to insure that Respondents do not violate the Act in the future. *HUD v. Blackwell*, 2 Fair Housing-

Fair Lending (P-H) ¶ 25,001, at 25,014 (HUDALJ Dec. 21, 1989), *aff'd*, 908 F.2d 864, 872-73 (11th Cir. 1990). The relief, however, is to be molded to the specific facts of a particular situation. The provisions of the Order set forth below will ensure against any future violations.

ORDER

Having concluded that Respondent Joe Ellis Joseph has violated 42 U.S.C. §§ 3604(a), (b) and (c); Respondent Dell Wood has violated 42 U.S.C. § 3604(a) and (b); and Respondent Tommy Wood has violated 42 U.S.C. § 3604(c), it is hereby

ORDERED that:

1. Respondents Joe Ellis Joseph, Dell Wood, and Tommy Wood are permanently enjoined from discriminating against any other person with respect to housing because of race or color. They may not use a tenant's credit history in a discriminatory manner. Other prohibited actions include, but are not limited to, those enumerated in 24 C.F.R. Part 100.

2. Consistent with 24 C.F.R. Part 110, Respondents Joe Ellis Joseph and Dell Wood shall display the HUD fair housing poster alongside any "for rent" signs posted in connection with any dwellings they own, manage, or otherwise operate within 10 days of the date on which this Order becomes final.

3. To prevent the occurrence of future discriminatory housing practices, Respondent Joe Ellis Joseph must institute record-keeping procedures with respect to the Veranda sufficient to allow him to make a twice yearly report to HUD's Southeastern Office of Fair Housing and Equal Opportunity for a period of three years. The reports shall contain a list of all persons who applied for rental of an apartment at the Veranda during the six months preceding the report, indicating the race of the applicant; whether the applicant was rejected or accepted; and, if rejected, the reason for such rejection.

4. Within 10 days of the date on which this Order becomes final, Respondents Joe Ellis Joseph, Dell Wood, and Tommy Wood shall pay Complainant Earsell Collier, Jr. $7,500.00 for emotional distress damages.

5. Within 10 days of the date on which this Order becomes final, Respondents Joe Ellis Joseph and Dell Wood shall each pay a civil penalty of $10,000.00 to the Secretary, United States Department of Housing and Urban Development.

6. Within 10 days of the date on which this Order becomes final, Respondent Tommy Wood shall pay a civil penalty of $1,000.00 to the Secretary, United States Department of Housing and Urban Development.

This Order is entered pursuant to 42 U.S.C. § 3612(g)(3) and the regulations codified at 24 C.F.R. § 104.910, and will become final upon the expiration of thirty (30) days or the affirmance, in whole or in part, by the Secretary within that time.

_____

SAMUEL A. CHAITOVITZ
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this INITIAL DECISION issued by SAMUEL A. CHAITOVITZ, Administrative Law Judge, in HUDALJ 04-93-0306-8, were sent to the following parties on this 2nd day of June, 1994, in the manner indicated:

_____
Chief Docket Clerk

REGULAR MAIL:

Robert B. McDuff, Esq.
771 North Congress Street
Jackson, MS 39202

Davey L. Tucker, Esq.
600 East Amite Street
P. O. Box 1261
Jackson, MS 39215-1261

Theresa L. Kitay, Esquire,
Office of Regional Counsel
U.S. Department of Housing and
Urban Development
688 Russell Federal Bldg.
75 Spring Street, SW
Atlanta, GA 30303-3388

INTEROFFICE MESSENGER:

Roberta Achtenberg, Assistant Secretary
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 7th Street, S.W., Room 5100
Washington, D.C. 20410

John Herold, Associate General Counsel
for Civil Rights and Litigation
U.S. Department of Housing and Urban Development
451 7th Street, S.W., Room 10258
Washington, D.C. 20410

Harry L. Carey, Assistant General Counsel for Fair Housing
U.S. Department of Housing and Urban Development
451 7th Street, S.W., Room 9238
Washington, D.C. 20410